All communications respecting this case should identify it by number and names of parties.



# UNITED STATES DEPARTMENT OF COMMERCE Patent and Trademark Office

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PAT. & T.M. OFFICE BOARD OF PATENT APPEALS AND INTERFERENCES Applicants: Goicoechea et al.

Serial No.: 08/461,402

Filed: 06/05/95

Title: BIFURCATED ENDOLUMINAL

PROSTHESIS

Accorded Benefit of: European Applications EP9440284.9 filed 02/09/94 and EP94401306.9 filed 06/10/94; and U.S. Serial No. 08/317,763 filed 10/04/94, now Patent No. 5,609,627 issued

03/11/97

The case referred to above has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with other cases hereafter specified. Attention is directed to the fact that this interference is declared pursuant to 37 CFR 1.601 et seq., effective February 11, 1985 (49 F.R. 48416. 1050 O.G. 385). The interference is designated as No. 104,083.

By direction of the Commissioner of Patents and Trademarks and as required by 35 USC 135(c), notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference."

Attachment
(37 CFR § 1.611(c))

The cases involved in this interference are:

JUNIOR PARTY

Patentee: Eric C. Martin

134 Old Post Road North Croton on Hudson, NY 10520

Patent: 5,575,817 issued 11/19/96, Serial No.

08/293,541 filed 08/19/94

Title: AORTO FEMORAL BIFURCATION GRAFT AND METHOD OF

IMPLANTATION

Assignees: None

Attorney(s): Robert J. Koch

Associate Attorney(s): None

Accorded Benefit of: None

Correspondence Address: Robert J. Koch

Fulbright and Jaworski 801 Pennsylvania Ave. N.W. Washington, D.C. 20004

SENIOR PARTY

Applicants: George Goicoechea

P.O. Box F-44289

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John Hudson

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Glenfield, Leicester LE3 8AG, England

Claude Mialhe

Av. Pierre Brossolette 83300 Draguignan, France Andrew H. Cragg

4502 Edina Boulevard Edina, Minnesota 55424

Michael D. Dake 665 Gerona Road Standford, CA 94305

Application:

08/461,402 filed 06/05/95

Title:

BIFURCATED ENDOLUMINAL PROSTHESIS

Assignees:

Boston Scientific Technology, Inc.,

A Minnesota Corporation

Attorney(s):

Paul F. Prestia, Allan Ratner, Andrew L. Ney,

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Christopher R. Lewis, Steven E. Koffs,

Anthony L. Dibartolomeo, Allan M. Wheatcraft,

Anthony Grillo and Leon Nigohosian, Jr.

Associate Attorney(s): None

Accorded Benefit of:

European Applications EP9440284.9 filed

02/09/94 and EP94401306.9 filed

06/10/94; and U.S. Serial No. 08/317,763 filed 10/04/94, now Patent No. 5,609,627

issued 03/11/97

Correspondence Address:

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#### Count 1

An apparatus for reinforcing a bifurcated lumen comprising:

a first section, configured to be positioned within the lumen, comprising:

an upper limb, configured to fit within the lumen upstream of the bifurcation;

a first lower limb, configured to extend into a first leg of said bifurcation when said first section is positioned in the lumen, and

a second lower limb, shorter than said first lower limb, and configured so that when said first section is positioned in the lumen, said second lower limb does not extend into a second leg of said bifurcation.

The claims of the parties which correspond to this

count are:

Martin : Claim 1

Goicoechea et al.: Claim 89

Murriel E. Crawford Administrative Pacent Judge

(703) 308-9797

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### Count 1:

An apparatus for reinforcing a bifurcated lumen comprising:

a first section, configured to be positioned within the lumen, comprising:

an upper limb, configured to fit within the lumen upstream of the bifurcation;

- a first lower limb, configured to extend into a first leg of said bifurcation when said first section is positioned in the lumen, and
- a second lower limb, shorter than said first lower limb, and configured so that when said first section is positioned in the lumen, said second lower limb does not extend into a second leg of said bifurcation.

This count is exactly the same as claim 1 of Martin, US Patent 5,575,817, and claim 89 of Cragg, Appl. 08/461,402.

The important feature of this count is that the bifurcated prosthesis has two limbs but only one limb extends across the bifurcation and into the lumen of the vessel.

### Count 2:

An apparatus for reinforcing a bifurcated lumen comprising:

a first section, configured to be positioned within the lumen, comprising:

an upper limb, configured to fit within the lumen upstream of the bifurcation;

a first lower limb, configured to extend into a first leg of said bifurcation when said first section is positioned in the lumen, and

a second lower limb, shorter than said first lower limb, and configured so that when said first section is positioned in the lumen, said second lower limb does not extend into a second leg of said bifurcation, and further comprising

a second section configured to be positioned separately within the lumen and joined to said second lower limb of the first section, effectively extending said second lower limb into said second leg of said bifurcation.

This count is exactly the same as claim 2 of Martin, US Patent 5,575,817, and claim 90 of Cragg, Appl. 08/461,402.

### Distinction between Counts 1 and 2.

The important feature of count 1 is that the bifurcated prosthesis has two limbs but only one limb extends across the bifurcation and into the lumen of the vessel. Count 2 requires an additional stent to be added to the short limb, thus making a two piece graft that extends into both branches of the vessel. The count 2 is patentably distinct from count 1 for this reason.

### A) Why claims correspond to Count 1.

- 1) Martin, US Patent 5,575,817: Claim 1 of the patent is identical to the count.
- 2) Cragg, application 08/461,402: Claim 89 of Cragg '402 is identical to the count.
- 3) Cragg, application 08/463,987: Claims 54, 59\*, 63,64 and 67 of Cragg '987 correspond to the count.

Independent claim 54 defines a method for delivering a bifurcated prosthesis. The prosthesis which is implanted into the vessel is bifurcated, thus having two limbs or distal stent portions, but only one limb extends across the bifurcation and into the branch lumen of the vessel. The implanted prosthesis is the main feature of the claim. The remaining method steps of claim 54 are well know in the art. The claim would be rejected if the count was available as prior art.

Independent claim 59\* defines a bifurcated prosthesis with first and second distal stent portions (analogous to the "two limbs" of the count) but only one distal stent portion extends across the bifurcation and into the branched lumen of the vessel. Claim 59\* further recites a graft layer on the bifurcated stent. Such a graft layer is well know in the art and the claim would be rejected if the count was available as prior art.

Independent claim 63 recite a method for delivering a bifurcated prosthesis. The resultant prosthesis which is implanted into the vessel is bifurcated, thus having two limbs or distal stent portions, but only one limb extends across the bifurcation and into the branch lumen of the vessel. The implanted prosthesis is the main feature of the claim. Claim 63 differs slightly from the count in that the prosthesis of claim 63 if formed from two distinct pieces. When assembled according

<sup>\*</sup>as filed in the After Final Amendment of 9/2/97 and stated as allowable over the cited prior art if filed in a separate amendment

to the method, the resultant prosthesis meets the limitations of the count. The claim would be rejected as obvious if the count was available as prior art.

Independent claims 65 and 67 recite a bifurcated prosthesis. The assembled prosthesis is bifurcated, thus having two limbs or distal stent portions, but only one limb extends across the bifurcation and into the branch lumen of the vessel. The implanted prosthesis is the main feature of the claim. The claims differs slightly from the count in that the prosthesis of the claims is formed from two distinct pieces. When assembled according to the claims, the resultant prosthesis meets the limitations of the count. The claim would be rejected as obvious if the count was available as prior art.

Dependent claim 64 does not recite a patentable distinct feature or method and the claim would be rejected if the count was available as prior art

### B) Why claims do not correspond to Count 1.

- 1) Martin, US Patent 5,575,817: Claims 2-17 of the patent do not correspond to the count. Claim 2 recites a separate patentable invention in that a second section is added to the shorter lower limb to extend the shorter second lower limb into the branched lumen of the vessel.
- 2) Cragg, application 08/461,402: Claims 55, 59, 62-65, 88 and 90 of Cragg '402 do not correspond to the count. The claims recite a separate patentable invention in that a second section is added to the shorter distal portion (analogous to the lower limb of the count) to extend the shorter second distal portion into the branched lumen of the vessel.
- 3) Cragg, application 08/463,987: Claims 62, 66 and 68 of Cragg '987 do not correspond to the count. The claims recite that a second section is added to the shorter distal portion

(analogous to the lower limb of the count) to extend the shorter second distal portion into the branched lumen of the vessel.

### C) Why claims correspond to Count 2.

- 1) Martin, US Patent 5,575,817: Claim 2 of the patent is identical to the count. Claims 3-17 do not recite patentable, distinct features and the claims would be rejected if the count was available as prior art.
- 2) Cragg, application 08/312,881: Claims 1-9, 11, 12, 63, 64, 66, 68-71, 73-84 correspond to the count.

Independent claims 1, 11, 63, 66 and 80 correspond to the count since a second section is added to the shorter distal portion (analogous to the second lower limb of the count) to extend the shorter second distal portion into the branched lumen of the vessel.

Claims 2-9, 12, 64, 68-71, 73-79 and 81-84 do not recite patentable, distinct features and the claims would be rejected if the count was available as prior art.

3) Cragg, application 08/461,402: Claims 55, 59, 62-65, 88 and 90 of Cragg '402 correspond to the count.

Claim 90 is identical to the count.

Independent claim 55 defines a method for delivering a bifurcated prosthesis. The prosthesis which is implanted into the vessel is bifurcated, thus having two limbs or distal stent portions, with one limb extending across the bifurcation and into the branch lumen of the vessel and a second section added to the shorter distal portion (analogous to the second lower limb of the count) to extend the shorter second distal portion into the branched lumen of the vessel. The implanted prosthesis is the main feature of the claim. The remaining method steps of claim 55 are well know in the art and would be rejected as obvious if the count was available as prior art.

Independent claim 59 recites a bifurcated prosthesis with a second section added to the

shorter distal portion (analogous to the second lower limb of the count) to extend the shorter second distal portion into the branched lumen of the vessel. This structure is identical, although worded differently, to the count.

Claims 62-65 and 88 do not recite patentable, distinct features and the claims would be rejected if the count was available as prior art.

4) Cragg, application 08/463,987: Claims 62, and 68 of Cragg '987 correspond to count 2.

Claims 62, and 68 recite a bifurcated prosthesis with a second section added to the shorter distal portion (analogous to the second lower limb of the count) to extend the shorter second distal portion into the branched lumen of the vessel. This structure is identical, although worded differently, to the count. Claim 68 further recites a graft layer on the bifurcated stent.

Such a graft layer is well know in the art and the claim would be rejected as obvious if the count was available as prior art.

5) Fogarty, application 08/463,836: Claims 27-69 correspond to count 2.

Independent claim 27 recites a method for forming a bifurcated structure with a first section (graft) added to one leg/connector section of the bifurcated structure forming a bifurcated prosthesis having two limbs but only one limb extends across the bifurcation and into the lumen of the vessel. The second section is then added to the shorter lower limb of the resultant bifurcated prosthesis to extend the shorter limb into the branched lumen of the vessel. The structure is the patentable feature of the method claim. This resultant structure is identical, although worded differently, to the count.

Independent claim 41 recites a method for introducing a bifurcated graft with a second

section added to the shorter second lower limb to extend the shorter second lower limb into the branched lumen of the vessel. The structure is the patentable feature of the method claim. This structure is identical, although worded differently, to the count.

Claims 28-40 and 42-69 do not recite patentable, distinct features and the claims would be rejected if the count was available as prior art.

### D) Why claims do not correspond to Count 2.

1) Martin, US Patent 5,575,817: Claim 1 of the patent does not correspond to count 2.

The important feature of claim 1 is that the bifurcated prosthesis has two limbs but only one limb extends across the bifurcation and into the lumen of the vessel. Count 2 requires an additional stent to be added to the short limb, thus making a two piece graft that extends into both branches of the vessel. The count 2 is patentably distinct from Martin's claim 1 for this reason.

2) Cragg, application 08/312,881: Claims 13-17 and 38 do not correspond to the count.

Claims 13-17 and 38 merely recite a bifurcated stent with a graft layer. The first and second distal stent portions are integral with the proximal stent portion and will simultaneously extend into the branches of the vessel when the proximal portion is deployed. Count 2 requires an additional stent to be added to the short limb, thus making a two piece prosthesis that extends into both branches of the vessel.

3) Cragg, application 08/461,402: Claim 89 of Cragg '402 does not correspond to the count.

The important feature of claim 89 is that the bifurcated prosthesis has two limbs but only one limb extends across the bifurcation and into the lumen of the vessel. Count 2 requires an additional stent to be added to the short limb, thus making a two piece graft that extends into both

branches of the vessel. The count 2 is patentably distinct from the Cragg '402 claim 89 for this reason.

4) Cragg, application 08/463,987: Claims 54, 59, 63, 64 and 67 of Cragg '987 do not correspond to the count.

The important feature of claims is that the bifurcated prosthesis has two limbs but only one limb extends across the bifurcation and into the lumen of the vessel. Count 2 requires an additional stent to be added to the short limb, thus making a two piece graft that extends into both branches of the vessel. The count 2 is patentably distinct from the Cragg '987 claims for this reason.

5) Fogarty, application 08/463,836: All claims correspond to count 2.

MICHAEL J. MILANO PRIMARY EXAMINER GROUP 3500

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Count # 2

# INTERFERENCE INITIAL MEMORANDUM

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INTERFERENCE INITIAL MEMORANDUM

Count # 2

### Count 1:

An apparatus for reinforcing a bifurcated lumen comprising:

a first section, configured to be positioned within the lumen, comprising:

an upper limb, configured to fit within the lumen upstream of the bifurcation;

- a first lower limb, configured to extend into a first leg of said bifurcation when said first section is positioned in the lumen, and
- a second lower limb, shorter than said first lower limb, and configured so that when said first section is positioned in the lumen, said second lower limb does not extend into a second leg of said bifurcation.

This count is exactly the same as claim 1 of Martin, US Patent 5,575,817, and claim 89 of Cragg, Appl. 08/461,402.

The important feature of this count is that the bifurcated prosthesis has two limbs but only one limb extends across the bifurcation and into the lumen of the vessel.

### Count 2:

An apparatus for reinforcing a bifurcated lumen comprising:

a first section, configured to be positioned within the lumen, comprising:

an upper limb, configured to fit within the lumen upstream of the bifurcation;

a first lower limb, configured to extend into a first leg of said bifurcation when said first section is positioned in the lumen, and

a second lower limb, shorter than said first lower limb, and configured so that when said first section is positioned in the lumen, said second lower limb does not extend into a second leg of said bifurcation, and further comprising

a second section configured to be positioned separately within the lumen and joined to said second lower limb of the first section, effectively extending said second lower limb into said second leg of said bifurcation.

This count is exactly the same as claim 2 of Martin, US Patent 5,575,817, and claim 90 of Cragg, Appl. 08/461,402.

## Distinction between Counts 1 and 2.

The important feature of count 1 is that the bifurcated prosthesis has two limbs but only one limb extends across the bifurcation and into the lumen of the vessel. Count 2 requires an additional stent to be added to the short limb, thus making a two piece graft that extends into both branches of the vessel. The count 2 is patentably distinct from count 1 for this reason.

# A) Why claims correspond to Count 1.

- 1) Martin, US Patent 5,575,817: Claim 1 of the patent is identical to the count.
- 2) Cragg, application 08/461,402: Claim 89 of Cragg '402 is identical to the count.
- 3) Cragg, application 08/463,987: Claims 54, 59\*, 63,64 and 67 of Cragg '987 correspond to the count.

Independent claim 54 defines a method for delivering a bifurcated prosthesis. The prosthesis which is implanted into the vessel is bifurcated, thus having two limbs or distal stent portions, but only one limb extends across the bifurcation and into the branch lumen of the vessel. The implanted prosthesis is the main feature of the claim. The remaining method steps of claim 54 are well know in the art. The claim would be rejected if the count was available as prior art.

Independent claim 59\* defines a bifurcated prosthesis with first and second distal stent portions (analogous to the "two limbs" of the count) but only one distal stent portion extends across the bifurcation and into the branched lumen of the vessel. Claim 59\* further recites a graft layer on the bifurcated stent. Such a graft layer is well know in the art and the claim would be rejected if the count was available as prior art.

Independent claim 63 recite a method for delivering a bifurcated prosthesis. The resultant prosthesis which is implanted into the vessel is bifurcated, thus having two limbs or distal stent portions, but only one limb extends across the bifurcation and into the branch lumen of the vessel. The implanted prosthesis is the main feature of the claim. Claim 63 differs slightly from the count in that the prosthesis of claim 63 if formed from two distinct pieces. When assembled according

<sup>\*</sup>as filed in the After Final Amendment of 9/2/97 and stated as allowable over the cited prior art if filed in a separate amendment

to the method, the resultant prosthesis meets the limitations of the count. The claim would be rejected as obvious if the count was available as prior art.

Independent claims 65 and 67 recite a bifurcated prosthesis. The assembled prosthesis is bifurcated, thus having two limbs or distal stent portions, but only one limb extends across the bifurcation and into the branch lumen of the vessel. The implanted prosthesis is the main feature of the claim. The claims differs slightly from the count in that the prosthesis of the claims is formed from two distinct pieces. When assembled according to the claims, the resultant prosthesis meets the limitations of the count. The claim would be rejected as obvious if the count was available as prior art.

Dependent claim 64 does not recite a patentable distinct feature or method and the claim would be rejected if the count was available as prior art

### B) Why claims do not correspond to Count 1.

- 1) Martin, US Patent 5,575,817: Claims 2-17 of the patent do not correspond to the count. Claim 2 recites a separate patentable invention in that a second section is added to the shorter lower limb to extend the shorter second lower limb into the branched lumen of the vessel.
- 2) Cragg, application 08/461,402: Claims 55, 59, 62-65, 88 and 90 of Cragg '402 do not correspond to the count. The claims recite a separate patentable invention in that a second section is added to the shorter distal portion (analogous to the lower limb of the count) to extend the shorter second distal portion into the branched lumen of the vessel.
- 3) Cragg, application 08/463,987: Claims 62, 66 and 68 of Cragg '987 do not correspond to the count. The claims recite that a second section is added to the shorter distal portion

(analogous to the lower limb of the count) to extend the shorter second distal portion into the branched lumen of the vessel.

### C) Why claims correspond to Count 2.

- 1) Martin, US Patent 5,575,817: Claim 2 of the patent is identical to the count. Claims 3-17 do not recite patentable, distinct features and the claims would be rejected if the count was available as prior art.
- 2) Cragg, application 08/312,881: Claims 1-9, 11, 12, 63, 64, 66, 68-71, 73-84 correspond to the count.

Independent claims 1, 11, 63, 66 and 80 correspond to the count since a second section is added to the shorter distal portion (analogous to the second lower limb of the count) to extend the shorter second distal portion into the branched lumen of the vessel.

Claims 2-9, 12, 64, 68-71, 73-79 and 81-84 do not recite patentable, distinct features and the claims would be rejected if the count was available as prior art.

3) Cragg, application 08/461,402: Claims 55, 59, 62-65, 88 and 90 of Cragg '402 correspond to the count.

Claim 90 is identical to the count.

Independent claim 55 defines a method for delivering a bifurcated prosthesis. The prosthesis which is implanted into the vessel is bifurcated, thus having two limbs or distal stent portions, with one limb extending across the bifurcation and into the branch lumen of the vessel and a second section added to the shorter distal portion (analogous to the second lower limb of the count) to extend the shorter second distal portion into the branched lumen of the vessel. The implanted prosthesis is the main feature of the claim. The remaining method steps of claim 55 are well know in the art and would be rejected as obvious if the count was available as prior art.

Independent claim 59 recites a bifurcated prosthesis with a second section added to the

shorter distal portion (analogous to the second lower limb of the count) to extend the shorter second distal portion into the branched lumen of the vessel. This structure is identical, although worded differently, to the count.

Claims 62-65 and 88 do not recite patentable, distinct features and the claims would be rejected if the count was available as prior art.

4) Cragg, application 08/463,987: Claims 62, and 68 of Cragg '987 correspond to count 2.

Claims 62, and 68 recite a bifurcated prosthesis with a second section added to the shorter distal portion (analogous to the second lower limb of the count) to extend the shorter second distal portion into the branched lumen of the vessel. This structure is identical, although worded differently, to the count. Claim 68 further recites a graft layer on the bifurcated stent.

Such a graft layer is well know in the art and the claim would be rejected as obvious if the count was available as prior art.

5) Fogarty, application 08/463,836: Claims 27-69 correspond to count 2.

Independent claim 27 recites a method for forming a bifurcated structure with a first section (graft) added to one leg/connector section of the bifurcated structure forming a bifurcated prosthesis having two limbs but only one limb extends across the bifurcation and into the lumen of the vessel. The second section is then added to the shorter lower limb of the resultant bifurcated prosthesis to extend the shorter limb into the branched lumen of the vessel. The structure is the patentable feature of the method claim. This resultant structure is identical, although worded differently, to the count.

Independent claim 41 recites a method for introducing a bifurcated graft with a second

section added to the shorter second lower limb to extend the shorter second lower limb into the branched lumen of the vessel. The structure is the patentable feature of the method claim. This structure is identical, although worded differently, to the count.

Claims 28-40 and 42-69 do not recite patentable, distinct features and the claims would be rejected if the count was available as prior art.

### D) Why claims do not correspond to Count 2.

1) Martin, US Patent 5,575,817: Claim 1 of the patent does not correspond to count 2.

The important feature of claim 1 is that the bifurcated prosthesis has two limbs but only one limb extends across the bifurcation and into the lumen of the vessel. Count 2 requires an additional stent to be added to the short limb, thus making a two piece graft that extends into both branches of the vessel. The count 2 is patentably distinct from Martin's claim 1 for this reason.

2) Cragg, application 08/312,881: Claims 13-17 and 38 do not correspond to the count.

Claims 13-17 and 38 merely recite a bifurcated stent with a graft layer. The first and second distal stent portions are integral with the proximal stent portion and will simultaneously extend into the branches of the vessel when the proximal portion is deployed. Count 2 requires an additional stent to be added to the short limb, thus making a two piece prosthesis that extends into both branches of the vessel.

3) Cragg, application 08/461,402: Claim 89 of Cragg '402 does not correspond to the count.

The important feature of claim 89 is that the bifurcated prosthesis has two limbs but only one limb extends across the bifurcation and into the lumen of the vessel. Count 2 requires an additional stent to be added to the short limb, thus making a two piece graft that extends into both

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branches of the vessel. The count 2 is patentably distinct from the Cragg '402 claim 89 for this

reason.

4) Cragg, application 08/463,987: Claims 54, 59, 63, 64 and 67 of Cragg '987 do not

correspond to the count.

The important feature of claims is that the bifurcated prosthesis has two limbs but only one

limb extends across the bifurcation and into the lumen of the vessel. Count 2 requires an

additional stent to be added to the short limb, thus making a two piece graft that extends into both

branches of the vessel. The count 2 is patentably distinct from the Cragg '987 claims for this

reason.

5) Fogarty, application 08/463,836: All claims correspond to count 2.

MICHAEL J. MILANO PRIMARY EXAMINER GROUP 3500

### INTERFERENCE DIGEST

Interference No	104,083	Paper No. 15
	George Goicoechea et al.	
	08/461,402 Patent No	
Title, BIFU	RCATED ENDOLUMINAL PROSTHESIS	
Filed,	06/05/95	
Interference with	Martin	
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This should be placed in each application or patent involved in interference in addition to the interference letters.